

General Information Letter: Illinois law follows federal income tax determination of whether person is an employee or not.

November 24, 2003

Dear:

This is in response to your letter dated November 7, 2003, in which you request a Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200).

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

I am writing to request a ruling on a certain situation that has arose (sic) in my field of work. I am in the Respiratory Care field and was wondering about some independent contractor issues. If I work for an agency that treats me like an independent is this legal? Below is a list of details that will outline the arrangement with the agency, and I wish to receive a ruling so I can move forward and be in compliance.

I will receive Hourly pay and am required to pay my own taxes.

The agency calls and offers me work, if I accept, they tell me where to go and when to be there.

I do not have to bill the agency, I just sign a time sheet and send it to the agency and they pay me bi-weekly.

I fill out an employment application at the time of hire.

I am required to fill out an employment contract with a non-compete agreement.

If the facility that I attend through the agency, wishes to hire me, they must pay Personnel finders fee.

The employment contract states that I am an employee of the agency.

Another issue that worries me is that in the employment agreement it states that the employer will not furnish me with any liability insurance. The reason this concerns me is

because the contract the agency has with the facility states that "All therapist (sic) will be covered by Professional/Comprehensive Liability Insurance with the following limits \$1,000,000/\$6,000,000. What happens if I am hurt or sued by a patient while I am working, am I insured? I'm not sure whether or not the agency is being truthful with me. I understand why an agency would like to treat me like an independent, as far as reducing their overhead via taxes, insurance, and other fees. My concern is if it is legal or not? I have enclosed copies of the documents I spoke about above, which will hopefully help you understand the issues better.

As to your first question, please be advised that for Illinois Income Tax Act (IITA) purposes, the term "employee" is defined at 86 Ill. Adm. Code 100.3100 b). That regulation states as follows:

#### Employee

Compensation is defined as remuneration for personal services performed by an 'employee'. If the employer-employee relationship does not exist, remuneration for services performed does not constitute 'compensation'. The term 'employee' includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. *The term has the same meaning under the Illinois Income Tax Act as under ... (Internal Revenue Code)... 26 U.S.C. Section 3401(c) and 26 CFR 31.3401(c)-1. (emphasis added).*

As you can see from the regulation, the Department looks to whether the employer-employee relationship exists for federal income tax purposes in a given set of circumstances to determine whether or not a taxpayer such as yourself is an "employee". Also, an employer who fails to withhold can be subject to penalties. IITA 706. Please be advised however that it has no authority under the IITA to compel a payer of monies to treat a payee as an "employee", even if the facts indicate that an employer-employee relationship exists. The Internal Revenue Service however can enforce an employer's legal obligation to withhold tax from wage income. You may therefore wish to correspond with that agency about this matter.

In any event, as an Illinois resident, all of your income is subject to Illinois income taxation. IITA 301(a). The ultimate responsibility for assuring that Illinois income tax is paid in a timely manner rests on the taxpayer. IITA 601(a). If tax is not being withheld from your income by the payer, it is your responsibility to make timely estimated tax payments thereon. IITA 803.

Regarding your second question, the terms of your policy govern your coverage if sued by a patient. As this is not a tax matter, you should consult the insurance company or a private attorney if you have questions regarding those terms.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

IT 03-0036-GIL  
November 24, 2003  
Page 3

Sincerely yours,

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